

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**DARAIUS DUBASH, and DR. FARAZ HARSINI**

**Plaintiffs,**

**v.**

**CITY OF HOUSTON, TEXAS;  
HOUSTON DOWNTOWN PARK  
CORPORATION; OFFICER ROBERT  
DOUGLAS (# 7943), in his Individual  
capacity; OFFICER VERN WHITWORTH  
(# 7595), in his individual capacity;  
DISCOVERY GREEN CONSERVANCY  
f/k/a HOUSTON DOWNTOWN PARK  
CONSERVANCY; and BARRY MANDEL,  
in his individual capacity,**

**Defendants.**

**CIVIL ACTION  
CASE NO. 4:23-cv-03556**

**DECLARATION OF BARRY MANDEL IN RESPONSE TO PLAINTIFFS' MOTION  
FOR PRELIMINARY INJUNCTION**

**BARRY MANDEL** declares as follows pursuant to 28 U.S.C. § 1746:

1. I am over 18 years of age and am a defendant in this action.
2. I submit this Declaration in response to Plaintiffs' motion for a preliminary injunction.
3. I am the former President and Park Director of Discovery Green Conservancy (hereinafter "the Conservancy"), a position I held from July 2010 until I retired in June 2023. In that role, I was responsible for the day-to-day operation and management of Discovery Green.
4. The Conservancy operates pursuant to an Operating Agreement with the Houston Downtown Park Corporation (see **Exhibit C**), which owns the property on which Discovery Green sits.

5. Discovery Green, along with the Conservancy, was conceptualized in 2004, as the embodiment of a vision for a downtown green space that would be different from just a public park, and would provide the public a location that offers a variety of amenities that are intended to enrich the outdoor experience of the public. Discovery Green is a public-private partnership between the City of Houston and the Conservancy, a non-profit organization responsible for the care, maintenance, and programming of the space.

6. A landscape architecture firm was retained in 2005, which began design of what would become Discovery Green. The Conservancy also worked with Project for Public Spaces, a non-profit organization that assists with the planning of outdoor spaces by developing strategies for architecture, landscaping, land use, and event planning that foster community involvement through the arts, cultural events, activities, amusements, and entertainment. Every aspect of Discovery Green was planned and designed to promote its purpose and mission.

7. Discovery Green has regularly hosted activities and events specially geared toward children, including concerts, performances, amusement activities, and movies, in addition to the John P. McGovern Playground that draws often hundreds of children throughout a given day. There are therefore always children using Discovery Green.

8. While I was President, I was contacted at various times by Discovery Green employees advising that Plaintiffs and/or their fellow demonstrators were demonstrating in Discovery Green by playing videos that violently depicted animals being tortured.

9. I was told that Discovery Green employees fielded multiple complaints from individuals in the park on days when Plaintiffs are demonstrating. Most troubling, I was advised that parents were complaining whenever Plaintiffs demonstrated, asserting that their children were being frightened by the videos and may have nightmares as a result. Plaintiffs' videos were

disruptive not only because they used a prominent location in the center of a major promenade, forcing patrons to see the videos, but they also violated the Rules insofar as Plaintiffs were playing videos without first seeking a special use permit. Further, the locations where Plaintiffs were protesting were in the center of the two busiest pedestrian intersections in Discovery Green. One is within approximately 250 feet of the playground, and is adjacent to the public restrooms and one of the restaurants in Discovery Green.

10. My response to those calls was for Plaintiffs to be asked to stop playing the videos or to be asked to leave. If they were to refuse, the employee was directed to contact the Houston Police Department to have them removed if they did not stop publicly displaying the videos.

11. My sole concern with Plaintiffs' conduct was the public display of videos displaying violence against animals. Neither I, nor the Conservancy, had any issue with their viewpoints, message, or speech. To the contrary, Discovery Green is sympathetic to their cause of advocacy against animal cruelty. Advocacy for animal rights would have been welcomed, but for the graphic videos being shown, particularly since they were being publicly shown to or around children.

12. The Rules of Discovery Green provide for a "Speakers' Corner" where individuals are free to speak about whatever topics they choose. If there were to be a gathering of 20 or more people, the demonstrators were required to obtain a permit. Also, regardless of group size, any time an individual or group wished to make an exclusive use of a particular part of Discovery Green for purposes of a demonstration, that individual or group was required pursuant to the Discovery Green Rules apply for a special use.

13. There came a time, prior to the filing of the lawsuit, when I met with Plaintiffs to discuss their complaints. I advised them that they could not find an organization more sympathetic

to their cause than the Conservancy. I also advised them that we were willing to work with them to find a way that they could convey their message at Discovery Green, except that they could not use their method of demonstrating that involves the use of the videos. They responded, in sum and substance, "our method is our mission." Thus, while we were willing to go so far as to affirmatively offer Plaintiffs a platform from which to convey their message, they insisted on instead playing their violent, graphic videos.

14. While I was president, there were never any protestors or demonstrators who sought to use graphic videos depicting violence as part of their demonstrations. Had there been, we would not have permitted them to show the videos, for the same reasons that we did not permit Plaintiffs to show theirs.

15. It is my understanding that Plaintiff Dubash is also claiming that he is being discriminated against because of his religion. When I was contacted by employees who confronted Plaintiffs, I was never advised that Plaintiff Dubash was engaged in religious expression. Plaintiff Dubash would have been free to discuss his religious beliefs with anyone, and without the content of that speech being censored. Again, the only objection to Plaintiffs' conduct was their public display of videos depicting violence to animals.

16. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Houston, Texas, on December 27<sup>th</sup>, 2023.

  
BARRY MANDEL